

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Legal Helpers Debt  
Resolution LLC, and,

**ORDER ON MOTION FOR  
SUMMARY DISPOSITION**

In the Matter of CDS Client Services, et al.

This matter came before Administrative Law Judge Eric L. Lipman for oral argument on September 6, 2013. Respondents, Legal Helpers Debt Resolution LLC and James Agosto, seek dismissal of the action against them pursuant to Minn. R. 1400.5500 (K).

Oliver J. Larson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Timothy D. Elliott, Rathje & Woodward, LLC, appeared on behalf of Respondents, Legal Helpers Debt Resolution LLC and James Agosto (Legal Helpers). William R. Mitchell, Logan Retoske, LLP, earlier appeared on behalf of CDS Client Services, Incorporated, JEM Group, Incorporated and Legal Support Services, LLC, but did not participate in the oral argument on September 6, 2013.

**STATEMENT OF THE ISSUES**

1. Are the debt settlement activities of the attorneys and non-attorney agents of Legal Helpers beyond the powers of the Department to regulate?
2. Are any of the Respondents entitled to a disposition as a matter of law?

**SUMMARY OF CONCLUSIONS**

The Administrative Law Judge concludes the statutory exemption in Chapter 322A for “attorneys at law” applies only to those persons who hold a law license. Accordingly, the non-attorney agents of Legal Helpers are subject to regulation by the Department when they undertake “debt settlement activities.” Legal Helpers is not entitled to a disposition of this case as a matter of law.

Based upon the hearing record and for the reasons set forth in the accompanying Memorandum,

## IT IS HEREBY ORDERED:

1. Legal Helpers' Motion for Summary Disposition is **DENIED**.
2. By **12:00 Noon on Friday, October 18, 2013**, counsel shall confer on a set of convenient dates for the close of discovery, pre-filing of witness lists and exhibits and an evidentiary hearing. During this conference, the parties shall exchange views on an appropriate update to the milestones discussed under Paragraph 7 of the Eighth Pre-Hearing Order.
3. By **4:30 p.m. on Friday, October 18, 2013**, counsel shall, jointly or separately, file with OAH a list of dates and times during the week that begins on **November 4, 2013**, at which they could participate in a telephone scheduling conference.

Dated: October 9, 2012

s/Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

## MEMORANDUM

### Factual Background

Legal Helpers is a limited liability company chartered in Illinois. It holds itself out to clients as a national law firm engaged in bankruptcy and consumer law.<sup>1</sup>

Legal Helpers maintains an office in Roseville, Minnesota. James Agosto, an attorney duly licensed in Minnesota and a partner of Legal Helpers, performs work on behalf of Legal Helpers from this office.<sup>2</sup>

As part of its business operations, Legal Helpers entered into what it has termed "Strategic Alliance Subcontract Agreements" with companies in other states, including the other parties to this case: Legal Services Support Group; JEM Group, Inc. (JEM Group); Lynch Financial Solutions, Inc.; and CDS Client Services, Inc. (CDS).<sup>3</sup> Under these subcontract agreements, Legal Helpers' affiliate companies assist it in enlisting clients, reviewing and maintaining client records and negotiating reductions in the amount of debt owed by those clients. Many of the services undertaken by these subcontractors occurred at the offices of the subcontractors.<sup>4</sup>

<sup>1</sup> See, Department (Dept) Exhibit (Ex.) 10 at 3; Dept Ex. 24 at 1.

<sup>2</sup> See, Legal Helpers Exs. 1 and 2; Dept Exs. 24 and 25.

<sup>3</sup> See, Dept Exs. 11 – 14.

<sup>4</sup> See, Dept Exs. 7, 8, 9, 10, 14 and 22.

In late 2010, Legal Helpers' business operations came under the scrutiny of state regulators in Illinois. The State of Illinois filed suit against Legal Helpers regarding its billing, business and client consultation practices.<sup>5</sup>

On August 9, 2012, the Minnesota Department of Commerce issued a Cease and Desist Order, directing Legal Helpers to refrain from providing debt settlement services or debt management services within Minnesota.<sup>6</sup>

Following a lengthy discovery period between the parties, Legal Helpers moved for summary disposition on August 5, 2013. Legal Helpers argues that to the extent that the Department seeks to regulate the range of persons with whom it may affiliate, those actions unconstitutionally conflict with regulations issued by the Minnesota Supreme Court. Legal Helpers asserts that the Minnesota Rules of Professional Conduct regulate the roles of non-attorney affiliates of law firms and that such regulations are committed to the Court alone as part of its power to "regulate the practice of law."<sup>7</sup>

### **Legal Standards for Summary Disposition**

Summary disposition is the administrative equivalent of summary judgment.<sup>8</sup> Summary disposition is appropriate when there is no genuine dispute as to the material facts of a contested case and one party necessarily prevails when the law is applied to those undisputed facts.<sup>9</sup>

The moving party carries the burden of proof and persuasion to establish that there are no genuine issues of material fact which would preclude disposition of the case as a matter of law.<sup>10</sup> Further, when considering a motion for summary disposition, the tribunal must view the facts in the light most favorable to the nonmoving party.<sup>11</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.

In order to defeat an otherwise proper motion for summary disposition, the non-moving party must show the existence of material facts that are genuinely disputed.<sup>12</sup> A

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<sup>5</sup> See, e.g., Dept Exs. 15, 16, 17 and 21.

<sup>6</sup> See, Exhibit 1 to NOTICE FOR HEARING ON CEASE AND DESIST ORDER, OAH Docket No. 8-1005-23074 (August 29, 2012) ("CEASE AND DESIST ORDER AND NOTICE OF RIGHT TO A HEARING").

<sup>7</sup> See, LEGAL HELPERS' MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION, OAH Docket No. 8-1005-23074, at 5 (August 5, 2013).

<sup>8</sup> See, *Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).

<sup>9</sup> See, *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

<sup>10</sup> See, *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

<sup>11</sup> See, *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

<sup>12</sup> See, *Murphy v. Country House, Inc.*, 240 N.W. 2d 507, 511-12 (Minn. 1976); *Borom v. City of St. Paul*, 184 N.W.2d 595, 597 (Minn. 1971).

genuine issue is one that is not either a sham or frivolous and a material fact is a fact whose resolution will affect the result or outcome of the case.<sup>13</sup>

## **Analysis**

Legal Helpers' argument relies upon three key points: (1) the Minnesota Supreme Court has promulgated rules which regulate attorneys affiliating with non-attorneys in business; (2) the law regulating entry into the practice of "debt settlement services" and "debt management services" in Minnesota exempts "attorneys" from its registration requirements; and (3) a sister court has determined that any exemption for attorneys from the requirement to obtain registration as a debt settlement service provider must also extend to the non-attorney, non-employee agents of those attorneys. Each of these claims is reviewed below.

### **1. The Minnesota Rules of Professional Conduct**

As Legal Helpers notes in its submissions, Rule 5.7 of the Minnesota Rules of Professional Conduct regulates the duties of attorneys when undertaking "Law-Related Services." Rule 5.7 states:

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstance by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services which might reasonably be performed in conjunction with and in substance are related to the provision of legal services and which are not prohibited as the unauthorized practice of law when provided by a nonlawyer.

Importantly, however, Comment 9 to Rule 5.7 observes:

A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological

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<sup>13</sup> See, e.g., *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

counseling, tax preparation, and patent, medical or environmental consulting.

In the view of the Administrative Law Judge, the purpose of Rule 5.7 is to impose additional, but not an exclusive set of ethical requirements for attorneys who undertake work that is regulated by other government agencies. Expressing the concern that a lawyer's clients might "fail[] to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship," the Supreme Court layered on to attorneys a set of ethical duties that are not placed on others who perform work in these "law-related fields."<sup>14</sup>

Holding a law license and undertaking work that is regulated by Executive Branch agencies does not, however, immunize these attorneys from other sources of regulatory discipline. Attorneys are not exempted from regulatory sanctions if they engage in misconduct while providing "law-related services" – including those services that are specifically referenced in the Commentary to Rule 5.7, such as title insurance,<sup>15</sup> accounting,<sup>16</sup> or lobbying.<sup>17</sup> The Minnesota Rules of Professional Conduct add to, rather than narrow, the bases for a lawyer's accountability.

## **2. Chapter 322A**

Minnesota regulates the provision of debt settlement services in this state. Our law obliges persons performing "debt settlement services" to obtain and maintain registration, unless they are exempted from the statute.<sup>18</sup> Further, while the Minnesota Legislature sharply narrowed the attorney exemption during its 2013 regular session,<sup>19</sup>

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<sup>14</sup> See, Minn. R. Prof. Resp. Rule 5.7, Comment 1.

<sup>15</sup> See e.g., *In the Matter of the Resident Agency License of Northwest Title Agency, Inc., et al*, OAH 2-1004-23080, 2013 WL 1781053, slip op. at \*9 (April 16, 2013) (The Chief Administrative Law Judge recommended regulatory discipline against the "sole designated individual producer" of title insurance who was also a member of the Minnesota Bar).

<sup>16</sup> See e.g., *Columbus Bar Assn. v. Kiesling*, 925 N.E.2d 970, 975 (Ohio 2010) (the Accountancy Board of Ohio revoked the certified public accountant certificate of the Respondent, a licensed attorney, "upon its determination that he had conducted an audit of the Logan County Red Cross while his license was expired").

<sup>17</sup> See e.g., *Findings In the Matter of a Contribution Made During The Regular 2004 Legislative Session by Mark Geier*, Minnesota Campaign Finance and Disclosure Board (October 15, 2004) (attorney-lobbyist was sanctioned for having made a campaign contribution to a candidate committee during a regular session of the Minnesota Legislature, in violation of Minn. Stat. § 10A.273, subd. 1 (b)) (<http://www.cfboard.state.mn.us/bdinfo/investigation/101504geier.pdf>); see also, Lobbyist Registration of Mark Geier (<http://www.cfboard.state.mn.us/lobby/lbdetail/lb1327.html>); *Findings In the Matter of a Complaint Regarding Carol Overland, Public Energy, Inc., and Public Intervenors Network, Inc.*, Minnesota Campaign Finance and Disclosure Board (Nov. 22, 2002) (attorney was subject to a fine for failing to timely register as a lobbyist in violation of Minn. Stat. § 10A.273, subd. 21(a)(1)) (<http://www.cfboard.state.mn.us/bdinfo/investigation/overlandfinalfindings.htm>).

<sup>18</sup> See, Minn. Stat. §§ 332A.02, subd. 8; 332B.02, subd. 13 and 332B.03 (2012); 2013 Laws of Minnesota, Chapter 91.

<sup>19</sup> See, 2013 Laws of Minnesota, Chapter 91, §§ 1 - 4.

the conduct referenced in the Notice and Order for Hearing predates those amendments. Accordingly, only the predecessor statute is discussed here.

The 2012 version of Minn. Stat. § 332B.02, subd. 10, defined “debt settlement services” as:

(1) offering to provide advice, or offering to act or acting as an intermediary between a debtor and one or more of the debtor’s creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services; or

(2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the debtor’s creditors.

This same version of Chapter 322B provided an exemption from this definition, and the corresponding requirement to obtain registration, for “attorneys at law” rendering “services ... in the regular course of their respective businesses and professions . . . .”<sup>20</sup>

In the view of the Administrative Law Judge, the Legislature could, very sensibly, limit the exemption from debt settlement services provider registration to attorneys and other similarly licensed professionals.<sup>21</sup> The Legislature could conclude that the risk of misconduct by these persons is low and, given the robust range of sanctions that are available to punish misbehavior by lawyers in particular, such an exemption is narrow in comparison to the statute’s larger anti-fraud purposes.<sup>22</sup>

This assumption, of course, is not true if the definition of “attorney” means more than “an individual admitted to practice law by a court of record of this state,”<sup>23</sup> but instead includes anyone with whom the attorney enters into a contract. The pool of people qualifying for the attorney exemption would then be quite large. It could include licensed professionals and non-professionals; those who have been subjected to a background check prior to licensure and those who have not; and both those who are

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<sup>20</sup> See, Minn. Stat. §§ 332A.02, subd. 8 (1), 332B.02, subd. 13 and 332B.03 (2012).

<sup>21</sup> See, Minn. Stat. §§ 332A.02, subd. 8 (1) and 332B.02, subd. 13 likewise exempts accountants and securities broker-dealers from the requirement to obtain registration.

<sup>22</sup> See *generally*, Minn. Stat. § 332B.02, subd. 11 (“No debt settlement services provider or lead generator may ... make any false, deceptive, or misleading statements or omissions about the rates, terms, or conditions of an actual or proposed debt settlement services plan, or create the likelihood of consumer confusion or misunderstanding regarding its services.”).

<sup>23</sup> See, Minn. Stat. § 645.45 (6) (“The following words and phrases, when used in any law enacted after the effective date of Laws 1941, chapter 492, section 45, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section ... ‘attorney at law’ means an individual admitted to practice law by a court of record of this state”).

within easy reach of Minnesota licensing authorities and those who reside in remote parts of the globe.

In the view of the Administrative Law Judge, the best reading of the exemption from registration for “attorneys at law” is that it signifies those individuals “admitted to practice law by a court of record of this state.”<sup>24</sup>

### **3. *Moore v. Suthers***

The Administrative Law Judge is mindful that the District Court for Denver County, Colorado, came to the opposite conclusion in the case of *Moore v. Suthers*.<sup>25</sup> When reading a Colorado statute that was quite similar to Minnesota’s registration exemption for attorneys, the District Court held that:

So long as the [non-attorney agent of the law firm] is acting under the supervision of attorneys, as contemplated by the Colorado Rules of Professional Conduct, [the agent] is providing legal services in rendition of the attorneys’ professional services.<sup>26</sup>

As the court reasoned, because it is ethically permissible for attorneys to contract with non-licensed personnel to deliver law-related services, a contractor who was under the supervision of an attorney was the equivalent of a person who held a law license.

In the view of the Administrative Law Judge that reasoning is not persuasive. The fact that attorneys are not disciplined for working in the same business enterprise as non-licensed persons does not obviate, or render unconstitutional, the licensing statutes which otherwise apply to those professions. If it did, being a joint venturer with a lawyer would nullify the licensing and registration requirements in a very wide range of “law-related services;” including licensing requirements for accountancy, financial planning, legislative lobbying, medicine, real estate, social work, patent agency, psychology and title insurance production. The rule that Legal Helpers urges today applies with equal force to these other law-related services that are specifically referenced in the Minnesota Rules of Professional Conduct.

Yet, it is not necessary to read the debt settlement statute and Rules of Professional Conduct as either irreconcilable or yielding such results. Attorneys and escrow agents in a law firm may undertake debt settlement services without separate registration, but others may not.<sup>27</sup> Reading the statute and the professional rules in this way gives meaning to both documents and effectuates their purposes.

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<sup>24</sup> *Accord, Legal Helpers Debt Resolution LLC v. Minn. Dep’t of Commerce*, Case No. 62-CV-12-6822, slip op. at 9 (Dist. Ct. Minn. 2012) (unpublished Order Denying Temporary Restraining Order and Temporary Injunction) (“applying the plain language of the law it only applies when attorneys provide legal services, not when non-attorney employees provide non-legal, or even legal, services.”).

<sup>25</sup> *Moore, et al v. Suthers*, Case No. 11-CV-7027 (Dist. Ct. Colo. 2012) (unpublished).

<sup>26</sup> *Moore v. Suthers*, slip op. at 11.

<sup>27</sup> Minn. Stat. §§ 332A.02, subd. 8 (1); 332B.02, subd. 13; and 332B.03 (2012).

Even if this were not true, however, the holding in *Moore v. Suthers* would still not urge the entry of summary disposition for Legal Helpers. An indispensable part of the conclusion in that case was that the record established that the non-attorney agents were under close supervision by licensed attorneys.<sup>28</sup> In this case, by contrast, the extent of the supervision of non-attorney affiliates of Legal Helpers is a genuinely disputed issue of material fact.<sup>29</sup>

For these reasons, Legal Helpers is not entitled to judgment as a matter of law. The appropriate result is to schedule this matter for an evidentiary hearing.

**E. L. L.**

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<sup>28</sup> *Moore v. Suthers, supra*, at 11-12.

<sup>29</sup> See, Dept Exs. 2, 3, 4, 5, 6, 7, 8, 17, 19, 20 and 22.